

REFERENCE TITLE: **spirituous liquor; underage consumption**

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
First Regular Session  
2007

# **HB 2343**

Introduced by  
Representative Driggs

**AN ACT**

**AMENDING SECTION 4-210, ARIZONA REVISED STATUTES; RELATING TO LIQUOR  
LICENSES.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2 Section 1. Section 4-210, Arizona Revised Statutes, is amended to  
3 read:  
4 4-210. Grounds for revocation, suspension and refusal to renew:  
5 notice; complaints; hearings  
6 A. After notice and hearing, the director may suspend, revoke or  
7 refuse to renew any license issued pursuant to this chapter for any of the  
8 following reasons:  
9 1. There occurs on the licensed premises repeated acts of violence or  
10 disorderly conduct.  
11 2. The licensee fails to satisfactorily maintain the capability,  
12 qualifications and reliability requirements of an applicant for a license  
13 prescribed in section 4-202 or 4-203.  
14 3. The licensee or controlling person knowingly files with the  
15 department an application or other document ~~which~~ THAT contains material  
16 information ~~which~~ THAT is false or misleading or while under oath knowingly  
17 gives testimony in an investigation or other proceeding under this title  
18 ~~which~~ THAT is false or misleading.  
19 4. The licensee or controlling person is on the premises habitually  
20 intoxicated.  
21 5. The licensed business is delinquent for more than ninety days in  
22 the payment of taxes, penalties or interest to the state or to any political  
23 subdivision of the state.  
24 6. The licensee or controlling person obtains, assigns, transfers or  
25 sells a spirituous liquor license without compliance with this title or  
26 leases or subleases a license.  
27 7. The licensee fails to keep for two years and make available to the  
28 department upon reasonable request all invoices, records, bills or other  
29 papers and documents relating to the purchase, sale and delivery of  
30 spirituous liquors and, in the case of a restaurant or hotel-motel licensee,  
31 all invoices, records, bills or other papers and documents relating to the  
32 purchase, sale and delivery of food.  
33 8. The licensee or controlling person is convicted of a felony  
34 provided that for a conviction of a corporation to serve as a reason for any  
35 action by the director, conduct ~~which~~ THAT constitutes the corporate offense  
36 and was the basis for the felony conviction must have been engaged in,  
37 authorized, solicited, commanded or recklessly tolerated by the directors of  
38 the corporation or by a high managerial agent acting within the scope of  
39 employment.  
40 9. The licensee or controlling person violates or fails to comply with  
41 this title, any rule adopted pursuant to this title or any liquor law of this  
42 state or any other state.  
43 10. The licensee fails to take reasonable steps to protect the safety  
44 of a customer of the licensee entering, leaving or remaining on the licensed  
45 premises when the licensee knew or reasonably should have known of the danger

1 to such person, or the licensee fails to take reasonable steps to intervene  
2 by notifying law enforcement officials or otherwise to prevent or break up an  
3 act of violence or an altercation occurring on the licensed premises or  
4 immediately adjacent to the premises when the licensee knew or reasonably  
5 should have known of such acts of violence or altercations.

6 11. The licensee or controlling person lacks good moral character.

7 12. The licensee or controlling person knowingly associates with a  
8 person who has engaged in racketeering, as defined in section 13-2301, or has  
9 been convicted of a felony, and the association is of such a nature as to  
10 create a reasonable risk that the licensee will fail to conform to the  
11 requirements of this title or of any criminal statute of this state.

12 13. THE LICENSEE OR CONTROLLING PERSON KNOWINGLY ALLOWS PERSONS WHO ARE  
13 UNDER SIXTEEN YEARS OF AGE TO CONSUME SPIRITUOUS LIQUOR ON THE PREMISES AND  
14 SEXUAL CONDUCT WITH A PERSON WHO IS UNDER SIXTEEN YEARS OF AGE, SEXUAL  
15 ASSAULT, MOLESTATION OF A CHILD OR AGGRAVATED ASSAULT HAS OCCURRED.

16 14. THE LICENSEE OR CONTROLLING PERSON KNOWINGLY ALLOWS PERSONS WHO ARE  
17 UNDER SEVENTEEN YEARS OF AGE TO CONSUME SPIRITUOUS LIQUOR ON THE PREMISES AND  
18 SEXUAL CONDUCT WITH A PERSON WHO IS UNDER SEVENTEEN YEARS OF AGE, SEXUAL  
19 ASSAULT, MOLESTATION OF A CHILD OR AGGRAVATED ASSAULT HAS OCCURRED AFTER A  
20 PREVIOUS OFFENSE OF ALLOWING A PERSON WHO IS UNDER SEVENTEEN YEARS OF AGE TO  
21 CONSUME SPIRITUOUS LIQUOR ON THE SAME PREMISES AND SEXUAL CONDUCT WITH A  
22 PERSON WHO IS UNDER SEVENTEEN YEARS OF AGE, SEXUAL ASSAULT, MOLESTATION OF A  
23 CHILD OR AGGRAVATED ASSAULT HAS OCCURRED.

24 B. For the purposes of:

25 1. Subsection A, paragraph 8 of this section, "high managerial agent"  
26 means an officer of a corporation or any other agent of the corporation in a  
27 position of comparable authority with respect to the formulation of corporate  
28 policy.

29 2. Subsection A, paragraphs 9 and 10 of this section, acts or  
30 omissions of an employee of a licensee, ~~which~~ THAT violate any provision of  
31 this title or rules adopted pursuant to this title shall be deemed to be acts  
32 or omissions of the licensee. Acts or omissions by an employee or licensee  
33 committed during the time the licensed premises were operated pursuant to an  
34 interim permit or without a license may be charged as if they had been  
35 committed during the period the premises were duly licensed.

36 C. The director may suspend, revoke or refuse to issue, transfer or  
37 renew a license under this section based solely on the unrelated conduct or  
38 fitness of any officer, director, managing agent or other controlling person  
39 if the controlling person retains any interest in or control of the licensee  
40 after sixty days following written notice to the licensee. If the  
41 controlling person holds stock in a corporate licensee or is a partner in a  
42 partnership licensee, the controlling person may only divest himself of his  
43 interest by transferring the interest to the existing stockholders or  
44 partners who must demonstrate to the department that they meet all the  
45 requirements for licensure. For the purposes of this subsection, the conduct

1 or fitness of a controlling person is unrelated if it would not be  
2 attributable to the licensee.

3 D. If the director finds, based on clear and convincing evidence in  
4 the record, that a violation involves the use by the licensee of a  
5 drive-through or other physical feature of the licensed premises that allows  
6 a customer to purchase spirituous liquor without leaving the customer's  
7 vehicle and that the use of that drive-through or other physical feature  
8 caused the violation, the director may suspend or terminate the licensee's  
9 use of the drive-through or other physical feature for the sale of spirituous  
10 liquor, in addition to any other sanction.

11 E. The director may refuse to transfer any license or issue a new  
12 license at the same location if the director has filed a complaint against  
13 the license or location ~~which~~ THAT has not been resolved alleging a violation  
14 of any of the grounds set forth in subsection A of this section until such  
15 time as the complaint has been finally adjudicated.

16 F. The director shall receive all complaints of alleged violations of  
17 this chapter and is responsible for the investigation of all allegations of a  
18 violation of, or noncompliance with, this title, any rule adopted pursuant to  
19 this title or any condition imposed upon the licensee by the license. When  
20 the director receives three such complaints from any law enforcement agency  
21 resulting from three separate incidents at a licensed establishment within a  
22 twelve-month period, the director shall transmit a written report to the  
23 board setting forth the complaints, the results of any investigation  
24 conducted by the law enforcement agency or the department relating to the  
25 complaints and a history of all prior complaints against the license and  
26 their disposition. The board shall review the report and may direct the  
27 director to conduct further investigation of a complaint or to serve a  
28 licensee with a complaint and notice of a hearing pursuant to subsection G of  
29 this section.

30 G. Upon the director's initiation of an investigation or upon the  
31 receipt of a complaint and an investigation of the complaint as deemed  
32 necessary, the director may cause a complaint and notice of a hearing to be  
33 directed to the licensee setting forth the violations alleged against the  
34 licensee and directing the licensee, within fifteen days after service of the  
35 complaint and notice of a hearing, to appear by filing with the director an  
36 answer to the complaint. Failure of the licensee to answer may be deemed an  
37 admission by the licensee of commission of the act charged in the complaint.  
38 The director may then vacate the hearing and impose any sanction provided by  
39 this article. The director may waive any sanction for good cause shown  
40 including excusable neglect. With respect to any violation of this title or  
41 any rule adopted pursuant to this title that is based on the act or omission  
42 of a licensee's employee, the director shall consider evidence of mitigation  
43 presented by the licensee and established by a preponderance of the evidence  
44 that the employee acted intentionally and in violation of the express  
45 direction or policy adopted by the licensee and communicated to the employee

1 and that the employee successfully completed training in a course approved by  
2 the director pursuant to section 4-112, subsection G, paragraph 2. The  
3 director may set the hearing before himself or an administrative law judge on  
4 any of the grounds set forth in subsection A of this section. Instead of  
5 issuing a complaint, the director may provide for informal disposition of the  
6 matter by consent agreement or may issue a written warning to the licensee.  
7 If a warning is issued, the licensee may reply in writing and the director  
8 shall keep a record of the warning and the reply.

9 H. A hearing shall conform to the requirements of title 41, chapter 6,  
10 article 10. At the hearing an attorney or corporate officer or employee of a  
11 corporation may represent the corporation.

12 I. The expiration, cancellation, revocation, reversion, surrender,  
13 acceptance of surrender or termination in any other manner of a license does  
14 not prevent the initiation or completion of a disciplinary proceeding  
15 pursuant to this section against the licensee or license. An order issued  
16 pursuant to a disciplinary proceeding against a license is enforceable  
17 against other licenses or subsequent licenses in which the licensee or  
18 controlling person of the license has a controlling interest.

19 J. The department shall provide the same notice as is provided to the  
20 licensee to a lienholder, ~~which~~ THAT has provided a document under section  
21 4-112, subsection B, paragraph 3, ~~of~~ of all disciplinary or compliance action  
22 with respect to a license issued pursuant to this title. The state shall not  
23 be liable for damages for any failure to provide any notice pursuant to this  
24 subsection.

25 K. In any disciplinary action pursuant to this title, a lienholder may  
26 participate in the determination of the action. The director shall consider  
27 mitigation on behalf of the lienholder if the lienholder proves all of the  
28 following by a preponderance of the evidence:

29 1. That the lienholder's interest is a bona fide security interest.  
30 For the purposes of this paragraph, "bona fide security interest" means the  
31 lienholder provides actual consideration to the licensee or the licensee's  
32 predecessor in interest in exchange for the lienholder's interest. Bona fide  
33 security interest includes a lien taken by the seller of a license as  
34 security for the seller's receipt of all or part of the purchase price of the  
35 license.

36 2. That a statement of legal or equitable interest was filed with the  
37 department before the alleged conduct occurred ~~which~~ THAT is the basis for  
38 the action against the license.

39 3. That the lienholder took reasonable steps to correct the licensee's  
40 prior actions, if any, or initiated an action pursuant to available contract  
41 rights against the licensee for the forfeiture of the license after being  
42 provided with notice by the department of disciplinary action as provided in  
43 subsection J of this section.

44 4. That the lienholder was free of responsibility for the conduct  
45 ~~which~~ THAT is the basis for the proposed revocation.

1           5. That the lienholder reasonably attempted to remain informed by the  
2 licensee about the business' conduct.

3           L. If the director decides not to revoke the license based on the  
4 circumstances provided in subsection K of this section, the director may  
5 issue an order requiring either, or both, of the following:

6           1. The forfeiture of all interest of the licensee in the license.

7           2. The lienholder to pay any civil monetary penalty imposed on the  
8 licensee.

9           M. If any on-sale licensee proposes to provide large capacity  
10 entertainment events or sporting events with an attendance capacity exceeding  
11 a limit established by the director, the director may request a security plan  
12 from the licensee that may include trained security officers, lighting and  
13 other requirements. This subsection exclusively prescribes the security  
14 requirements for a licensee and does not create any civil liability for the  
15 state, its agencies, agents or employees or a person licensed under this  
16 title or agents or employees of a licensee.